

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WISCONSIN

IN RE: CARL WILLIAM BERNTSEN, Case No. 05-45950

 Debtor. Chapter 13

ORDER CONFIRMING TERMINATION OF STAY

On January 14, 2006, creditor Mortgage Electronic Registration Systems, Inc. (“MERS”), as assignee of M&I Mortgage Corporation, filed an *ex parte* motion asking this Court to grant it relief from the automatic stay regarding property located at 962 Shabbona Road. In the accompanying affidavit, counsel for MERS indicated that the debtor in this matter had had a previous Chapter 13 bankruptcy case dismissed within the year preceding the filing of the current case. The affidavit further stated that as of the date of the motion, no party had moved to extend the stay pursuant to 11 U.S.C. § 362(c)(3)(B), and that no hearing had been held on such a motion. Accordingly, MERS asked that this Court “lift” the stay “immediately.” The Court cannot “lift” the stay, because it is no longer in effect. Rather, the Court can issue an order confirming that the stay has been terminated.

The debtor filed the instant Chapter 13 petition on December 15, 2005. Accordingly, the law which governs this filing is the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”). Under § 362(c)(3)(A) of BAPCPA, a debtor who has had a prior case pending within the year prior to filing

the current case, but had that case dismissed, receives the protection of the automatic stay for only 30 days. The statute requires that, “with respect to any action taken with respect to a debt or property securing such debt,” the stay “shall terminate with respect to the debtor on the 30th day after the filing of the later case.”

This debtor did, in fact, have a case pending during the year preceding December 15, 2005. On January 13, 2004, a petition was filed in case number 04-20388, and the matter was assigned to Judge Susan V. Kelley of the Eastern District. On June 28, 2005, Judge Kelley dismissed the case because the debtors failed to make plan payments. Because this dismissal happened within the year preceding the debtor’s filing of the current petition, he falls within the ambit of § 362(c)(3)(A).

Section 362(c)(3)(B) allows a debtor in this situation to file a motion asking that the 30-day stay be continued. The motion must be properly noticed, and a hearing on the motion must be completed within the 30-day period when the stay is in effect. The debtor bears the burden of proving that the latest filing was made in good faith, and bad faith is presumed under certain circumstances. Absent such a motion and hearing, and absent a finding of good faith by the court, the stay terminates on the 30th day.

In the current case, the 30th day after the filing of the petition fell on January 14, 2006. The docket indicates that during that 30-day period, the debtor did not

file a request to extend the stay. Accordingly, the stay terminated on January 14, 2006. Because the stay is no longer in effect, the Court cannot grant the creditor's motion to "lift" the stay.

Section 362(j) of BAPCPA, however, states that "[o]n request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated." The Court construes the creditor's motion as a § 362(j) request for what is sometimes known as a "comfort" order.

Accordingly, pursuant to § 362(j), the Court confirms that, as to the above-captioned debtor, the automatic stay terminated under 11 U.S.C. § 362(c)(3)(A) "with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease" on January 14, 2006.

SO ORDERED this 30th day of January, 2006.

HON. PAMELA PEPPER
U.S. Bankruptcy Court

Cc: Carl William Berntsen
Debtor

Brian P. Thill
Counsel for MERS

Mary B. Grossman
Standing Chapter 13 Trustee

Office of the U.S. Trustee